

ALAMIN MINING CORP.

IBLA 84-748

Decided January 22, 1986

Appeal from a decision by the Anchorage District Office, Alaska, Bureau of Land Management, declaring placer mining claims null and void and rejecting mining claim recordation filings. AA-27341 through AA-27352.

Vacated in part, affirmed in part.

1. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim -- Mining Claims: Generally -- Mining Claims: Recordation -- State Selections

Issuance of a patent to a state without mineral reservation removes the land from the jurisdiction of the Department, and the statutory requirement that a claimant file documents pursuant to 43 U.S.C. § 1744 (1982) is not applicable to claims located on such land. Therefore, documents filed pursuant to 43 U.S.C. § 1744 (1982) may properly be rejected.

2. Patents of Public Lands: Suits to Cancel

The Department is barred from initiating action to vacate and annul a patent of public lands 6 years after the date of issuance of the patent, unless the patent was procured by fraud.

APPEARANCES: Thomas E. Meacham, Esq., Anchorage, Alaska, for appellant; Dennis J. Hopewell, Esq., Deputy Regional Solicitor, U.S. Department of the Interior, Anchorage, Alaska, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

Alamin Mining Corporation (Alamin) has appealed from a June 27, 1984, decision of the Anchorage District Office, Bureau of Land Management (BLM), rejecting mining claim recordation filings and declaring the claims null and void. Location notices for the 12 claims subject to this appeal indicate

the claims were located on the first day of December 1971. ^{1/} The claims are depicted on a map submitted by the locator as being situated in secs. 3, 10 and 15, T. 22 S., R. 14 E., and sec. 34, T. 21 S., R. 14 E., Kateel River Meridian. Appellant Alamin is an interested party by reason of a lease agreement with the claimants.

On February 1, 1972, the State of Alaska filed selection application F 15302 for lands in T. 21 and 22 S., R. 14 E., Kateel River Meridian, and other lands. On August 13, 1976, BLM issued patent No. 50-76-0244 to the State of Alaska, which included the lands in T. 21 and 22 S., R. 14 E., Kateel River Meridian.

On July 27, 1979, copies of location notices for the claims were filed with BLM pursuant to section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1982). Affidavits of assessment work performed were filed in 1979, 1980, 1981, 1982, and 1983. In a June 27, 1984, decision, BLM rejected recordation documents due to the lack of Departmental jurisdiction over lands patented to the State of Alaska and declared the claims null and void.

[1] In order to ascertain the propriety of the rejection of the mining claim recordation documents, one must examine the reason Congress enacted section 314 of FLPMA. Prior to its enactment, "Federal land managers [had no] easy way of discovering which Federal lands [were] subject to either valid or invalid mining claim locations." S. Rep. No. 583, 94th Cong. 1st Sess. 65 (1975). The purpose of the recordation requirements is "to advise the Federal land managing agency, as proprietor, of the existence of mining claims." *Id.* As noted in *United States v. Locke*, 105 S. Ct. 1785 (1985), the purpose of the provision is to "rid federal lands of stale mining claims and to provide for centralized collection by federal land managers of comprehensive and up-to-date information on the status of recorded but unpatented mining claims." *Id.* at 1798. Thus, if the lands are not managed by the Federal Government, there is no reason for filing the documents called for by the mining claim recordation provisions of FLPMA. A determination that documents should be rejected for this reason does not, however, have any effect on the validity (or invalidity) of the claims. *Ed Bilderback*, 89 IBLA 263 (1985).

^{1/} The 12 claims are as follows:

Claim Name	BLM Serial No.
Discovery No. 1	AA-27341
Discovery No. 2	AA-27342
Discovery No. 3	AA-27343
Discovery No. 4	AA-27344
Discovery No. 5	AA-27345
Discovery No. 6	AA-27346
Discovery No. 7	AA-27347
Discovery No. 8	AA-27348
Martha 1	AA-27349
Stella 2	AA-27350
Forest 3	AA-27351
Herman 4	AA-27352

As noted in Bilderback, supra, if a mining claim is located prior to state selection, the rejection of the mining claim recordation documents will have no effect upon title to the claims, and an appellant's due process rights are not violated by a decision which rejects the documents. As noted at page 265 of Bilderback, since the Department lacks jurisdiction over the lands, it may not declare the claims to be null and void. The issue of title which exists between appellant and the state should be addressed in a court of competent jurisdiction, rather than by BLM. 2/ The June 27, 1984 decision is vacated to the extent it declared the claims null and void.

[2] Appellant seeks to have BLM set aside the patent to the state to the extent of the conflict with the mining claims. 3/ It is true that, if the Government has an obligation to a claimant which cannot be fulfilled unless the claimant recovers title, it is appropriate to set aside a patent or other conveyance. See Bilderback, supra at 269 and cases cited therein. However, the Department is barred by the provisions of 43 U.S.C. § 1166 (1982) from initiating action to vacate and annul the patent issued to the State of Alaska on August 13, 1976, as 6 years have lapsed since the date of issuance of that patent. 4/ Thus, if appellant now seeks to have the patent set aside, appellant must take the necessary steps to do so, rather than relying on the Government. See Capron v. Van Horn, 258 P. 77 (Cal. 1927).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, that portion of the June 27, 1984, BLM decision declaring the claims null and void is vacated, and that portion of the decision rejecting the mining claim recordation documents is affirmed.

R. W. Mullen
Administrative Judge

We concur:

James L. Burski
Administrative Judge

Will A. Irwin
Administrative Judge

2/ In cases where the claims had been located subsequent to patent, this Board has found it proper to declare the claims to be null and void ab initio, as the land was not available for mineral entry at the time of location. Ralph C. Memmott, 88 IBLA 360 (1965); Paul S. Coupey, 33 IBLA 178 (1977). However, it would not be necessary for BLM to make a null and void ab initio determination as a basis for rejection of mining claim recordation filings if title has passed from the Federal Government.

3/ Counsel for appellant seeks to have this Board overturn Harry J. Pike, 67 IBLA 100 (1982). We do not, however, find it necessary to do so, as appellant's rights of due process are still afforded.

4/ If it were shown that the patent was procured by fraud the statute would not apply. There is no reason to believe this to be the case in the matter before us.

